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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339
)
) Div. 6
)
) **DEFENDANT'S POSITION ON**
) **COURT'S ORDER OF AUGUST**
) **13, 2010 REGARDING**
) **HARTFORD INSURANCE**
) **EVIDENCE**
)
)
) **UNDER SEAL**

22 Steven DeMocker, by and through counsel, hereby files his position on the
23 Court's Under Seal Order of August 13, 2010, regarding Hartford Insurance evidence.
24 This position is based on the due process clause, the confrontation clause, the right to a
25 fair trial, the Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence,

26
27 RECEIVED

28 AUG 18 2010

DIVISION 6

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 AUG 18 PM 2: 09 ✓

JEANNE NICKS, CLERK

BY: J. Kees

1 Arizona Rules of Criminal Procedure and the following Memorandum of Points and
2 Authorities.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 On August 13, 2010, the Court issued an Under Seal Ruling regarding evidence
6 relating to the disposition of the proceeds of the Hartford Insurance Policies. Counsel
7 had only a few minutes to review the three page document prior to responding in court
8 that day. The conclusion to the Ruling states that:

- 9 (1) Evidence as to the ultimate disposition of the insurance proceeds would be
10 admissible. Acknowledging that the defense has objected to the admission of all
11 insurance or disclaimer evidence that arguably would be negative to the
12 Defendant's position. The Court also notes that the conditional stipulation
13 suggested by the defense includes such evidence. However, the Court also rules
14 that evidence of the amount involved is admissible.
- 15 (2) Subject to the limitations stated in part (3) of this Ruling, evidence relating to a
16 witness's reason for his or her involvement in the transfer of the insurance funds
17 is admissible.
- 18 (3) As the Court has previously ruled, any evidence or argument offered to suggest
19 that the transfer of funds occurred in an unlawful manner, whether in a criminal
20 or civil sense, is not admissible.

21 After a brief review of the Order in the time allowed, the defense noted the
22 apparent confusion created by paragraph (2). The defense understood that prior orders
23 of the Court had limited "evidence relating to a witness's reason for his or her
24 involvement in the transfer of the insurance funds" beyond the limitations in paragraph
25 (3) of the Order. The Court assured counsel that "I don't think there's anything
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1 inconsistent with what I've said at all so far. I don't see that" and requested the parties
2 carefully review the Ruling. (8/13/2010 Under Seal Transcript, pg. 33:20-23).

3 During the hearing on August 13, the Court explained that "[t]he jury was told,
4 you know, you're going to find out that the girls got these funds. So that really suggests
5 there's some relevance here. Well, talking about a disclaimer and what it really means,
6 and I hope I at least made clear of how I think explaining the disclaimer really gets to
7 the bottom of the problem, what is a disclaimer, and I talked about legal disclaimer and
8 what that would mean versus what would a jury would take from that statement, just
9 common dictionary definition." (Id. at 21:15-24). The Court also went on to state
10 "[t]hen you're getting down to what can legitimately be argued to say that everybody,
11 you know, that is on the defense was somehow manipulated or worked with Mr.
12 DeMocker to obtain these funds, there's no evidence of that, and Mr. Butner, I've
13 indicted that could not be argued. I mean, from what I've seen here that can't be
14 argued." (Id. at 16:13-19).

15 Defense counsel have now had the opportunity to carefully review the Court's
16 August 13 Ruling, as well as the Court's prior rulings about limitations on the Hartford
17 Insurance evidence. With this review, and with the understanding that the Ruling's
18 limitations governing evidence relating to "a witness's reason for his or her involvement
19 in the transfer of the insurance funds" are consistent with the Court's prior rulings, the
20 defense continues to believe that there is no conflict, no need for a waiver by Mr.
21 DeMocker, and that all defense counsel are ready to resume trial on August 24, 2010.¹
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26 ¹ This position is also based on counsel's understanding from the State that any "criminal investigation" is on hold
27 and will be referred outside of Yavapai County; and on Mr. Butner's representation made August 13, 2010, that
28 Bar counsel indicated it was likely to defer to [REDACTED]

1 **I. The Court's Prior Rulings Limiting the Hartford Insurance Evidence -**
2 **Prohibiting Evidence of Allegations of Misconduct by Defense Counsel and**
3 **Precluding Evidence of the Details of the Transfer of Funds from the Trust**
4 **and Estate**

5 Although the State says it first learned of the distribution of the Hartford Life
6 Insurance proceeds to Katie and Charlotte DeMocker on June 3, 2010², it waited to raise
7 the issue of a possible conflict until it filed a July 12, 2010, Motion for Determination of
8 Counsel. Thereafter, the Court received voluminous documents and a chronology from
9 the State and held under-seal hearings on July 14, July 16, July 20, August 3, August 4,
10 August 11, August 12 and August 13, 2010. During these hearings, the Court made a
11 number of significant rulings as to the scope and admissibility of the Hartford Insurance
12 issues.

13 On July 16, the Court held that there would be no accusations of wrongdoing by
14 the defense team and that the details of Mr. DeMocker's efforts to obtain the Hartford
15 Insurance proceeds after Carol Kennedy's death were not relevant or admissible under
16 Rule 403 and 404(b). The Court held that "this trial would not involve accusations in
17 any fashion of wrongdoing by the defense team. It is not. That, in itself, eliminates a
18 lot of the records right there." (7/16/10 Under Seal Transcript, 6:6-9). That same date,
19 the Court also stated that "I am not saying, Mr. Butner, that there are instances where
20 subsequent events -- and I mean by 'subsequent,' after the actual incident -- there may
21 be cases where there is relevance to the efforts to obtain monies to pay defense
22 attorneys and pay for defense. And there just is not that showing in this case,
23 whatsoever, to make the relevance such that the probative value would stand up against
24 the very high danger of unfair prejudice, based on the showing that I have here, and also
25 the 404(b) aspects, as well. This is what I have got right now. So that means that the

26 ² As early as November 2008, the State had emails from Steve DeMocker to Hartford and a recorded phone call
27 with Hartford that indicated that Mr. DeMocker was seeking to disclaim benefits and get the insurance proceeds to
28 his daughter.

1 disclosure cannot be used, again late disclosure, but I am looking primarily at 403 and
2 404(b), that disclosure cannot be used for the improper purpose.” (*Id.* 7:2-15).

3 During a July 20 under seal proceeding, the Court clarified its earlier ruling, “[i]f
4 I could clarify a bit what I thought my ruling was, and I didn’t say it in this way, but
5 essentially there is not going to be a large mini trial on the details of how attorneys fees
6 got paid. That is not going to happen.” (7/20/10 Under Seal Transcript, 8:18-22). The
7 Court also held that “[t]here is not going to be this detailed discussion of the trust,
8 estate, checks from here to there and this person to that person. None of that is coming
9 in in this case.” (*Id.* 10:10-13). Later still, the Court indicated that “[t]he scheme is not
10 what is going to be any part of this trial. Period. Clear. No part of the trial, you
11 portraying that as some kind of scheme. I don’t know how to say that more clear.” (*Id.*
12 25:13-16). And further, “[t]here is one issue in play, and that is somewhere between the
13 stipulations or one stipulation that’s the issue that’s in play, not reopening any kind of
14 detailed account of where the money -- how the money went and where it went
15 specifically. That is not going to be the subject of this trial.” (*Id.* 41:13-18).

16 Trial resumed on July 21 with these understandings. After the Court was closed
17 on August 2, the State filed a Motion for Protective Order and Response to Defendant’s
18 Motion to Dismiss that alleged for the first time that it has initiated a criminal
19 investigation of defense counsel (and perhaps others) and [REDACTED]

20 [REDACTED].
21 On August 3 and 4, the Court held additional under-seal hearings. The Court
22 never wavered from its initial ruling that the trial would not involve allegations of
23 wrongdoing by the defense counsel and that evidence about the details of the transfer of
24 funds would be prohibited. At the August 4 hearing, the Court indicated that it
25 understood that an argument from the State that Mr. DeMocker had “dominion and
26 control” of the Hartford Insurance proceeds would place the defense in a precarious
27

1 position. "I remember that exchange very well and I remember, Mr. Sears, you
2 indicating you know, Mr. Butner is going to get up and talk about dominion and control
3 and this whole master plan and I said something about if he does that it would likely be
4 stricken." (August 4 Under Seal transcript, 78:20-24).³ "[O]nce an argument comes in
5 that this is all some kind of a master plan, that puts the defense in a position of having to
6 say how did this exactly come a -- I am sorry. How did this exactly come about? What
7 was our role in it?" (*Id.* 82:10-13). The Court explained the limits it was placing on the
8 State in discussing a jail call between Mr. DeMocker and his daughter Katie, "I think
9 you can go into things into that interview. I do, but to that -- if there is going to be an
10 argument about this master plan and all was way back and just happened to go to
11 attorney fees, we have got an issue that I don't think can be solved." (*Id.* 82:16-20).

12 After further briefing, the Court held still further under-seal hearings on August
13 11, 12, and 13. On August 11, the Court reminded the State, "I have ruled that the trial
14 is not going to be about wrongdoing by the defense attorneys. There aren't going to be
15 allegations of defense attorneys collaborating or somehow being manipulated in a
16 criminal endeavor. I have not seen proof of that." (August 11, 2010 Partial Transcript,
17 Under Seal 7:14-19). The Court continued, "I've said that a trial that would involve
18 allegations that making this document or taking this step was somehow unlawful -- and
19 many times I'm saying illegal when I mean criminally unlawful. But any type of
20 evidence that goes to this is some kind of a breach of trust, something like that, that's
21 not what the trial is going to be about. (*Id.* 8:9-16). The Court went on to reiterate that
22 issues of the "machinations" of the trust and estate transfer of monies would not be
23 permitted at trial. "But reading that these opinions, I don't see how it relates directly to
24

25 _____
26 ³ The Court also noted, "[b]ut that's not any kind of final ruling. You need to understand that, Mr. Butner. And
27 that does interject some uncertainty in this whole process and I fully appreciate that and one of the things I am
28 trying to work with, with all the other things that need decision in the case, is guidance to be able to deal with that
because it does bear on the other thing we are talking about here, these allegations of misconduct." (79:5-12).

1 this case. That's my concern with it Mr. Butner. I just don't see a direct relation to this
2 case unless it is framed in that argument of the defense team is some how being
3 manipulated to participate in a scheme. *Just the mechanics of how the money got*
4 *transferred whether or not there was some irregularities is how it was characterized I*
5 *just don't see why this has to be a part of this.* I'm having real difficulty with that. I
6 don't know that anyone can say any more.” (Id. 19:5-14) (emphasis added).

7
8 On August 13, the Court issued an under-seal Ruling indicating that it was to be
9 read consistent with these prior rulings.⁴ After careful review of this Ruling and the
10 Court’s prior rulings, and with the understandings that 1) the trial will not include
11 allegations of wrongdoing by defense counsel, and 2) the trial will not include evidence
12 reading to the details of the transfer of funds from the trust and estate, counsel continue
13 to believe that there is no conflict, no need for a waiver, and trial should proceed as
14 scheduled on August 24, 2010.

15 **II. The State’s Continued Plan to Present Evidence Contrary to the**
16 **Court’s Orders.**

17 Even after hearing the Court’s prior rulings and after having read the Ruling on
18 August 13, the State inexplicably responded that it still intends to attempt to present
19 evidence of details of the transfer of funds from the trust and estate, in violation of the
20 Court’s orders. At the hearing on August 13, Mr. Butner told the Court “[w]e have one
21 witness that was immunized already that was immunized for other reasons and she will
22 testify about this, ... *she will testify about the insurance proceeds under a grant of*
23 *immunity also, and that’s Renee Girard, and she was involved in the payment of those*
24 *proceeds directly into an account, \$350,000 directly into an account owned by the*

25 ⁴ The Court also stated that “I’m saying that because I know what Mr. Butner has indicated that he wants to
26 argue, and I think it’s at that time—it’s at that time that the question of participation by specific attorneys could be
27 interjected,” citing *Bible*. (8/13/2010 Transcript 4:2-3). Counsel intend to brief the issue of limitations on closing
28 argument shortly for the Court.

1 *defendant that he of course jointly owned with his daughter Charlotte.* (8/13/10
2 Transcript 19:3-11, emphasis added). As detailed above, and as defense counsel
3 understand the Court's rulings, this proposed testimony (and any similar to it from any
4 witness) would be prohibited and the State's attempt to introduce such testimony would
5 be a violation of the Court's orders and further grounds for a mistrial.

6 **CONCLUSION**

7 With this review, and with the understanding that the limitations to evidence
8 related to "a witness's reason for his or her involvement in the transfer of the insurance
9 funds" are consistent with the Court's prior rulings, the defense continues to believe that
10 there is no conflict, no need for a waiver by Mr. DeMocker, and counsel are ready to
11 proceed to trial on the date of scheduled resumption, August 24, 2010.

12
13 DATED this 18th day of August, 2010.

14
15 By: 

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1 **ORIGINAL** of the foregoing hand delivered for
2 filing this 18th day of August, 2010, with:

3 Jeanne Hicks
4 Clerk of the Court
5 Yavapai County Superior Court
6 120 S. Cortez
7 Prescott, AZ 86303

7 **COPIES** of the foregoing hand delivered this
8 this 18th day of August, 2010, to:

9 The Hon. Warren R. Darrow
10 Judge Pro Tem B
11 120 S. Cortez
12 Prescott, AZ 86303

13 Joseph C. Butner, Esq.
14 Jeffrey Paupore, Esq.
15 Prescott Courthouse basket

16 
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